

12565

RECORDATION NO. .... Filed 1425

DEC 11 1980-10 25 AM

INTERSTATE COMMERCE COMMISSION

No. 0-346A027  
DEC 11 1980  
Date...  
Fee \$50.00Interstate Commerce Commission  
Washington, D.C.

ICC Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of 49 USC 11303 of the Interstate Commerce Act, as amended, are the original and two certified true copies of an Equipment Lease dated as of November 1, 1980.

A general description of the railroad rolling stock covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessee under Equipment  
Lease:

Chicago and North Western  
Transportation Company  
400 West Madison Street  
Chicago, Illinois 60606

Lessor under Equipment  
Lease:

C.I.T. Corporation  
650 Madison Avenue  
New York, New York 10022

The undersigned is the Lessor mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original copy of the Equipment Lease to James K. Markey, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

C.I.T. CORPORATION

Enclosures

BRANCH  
DOCKET FILES  
DEC 11 10 28 AM '80

Its

*David R. Pugh*  
VP

SCHEDULE A

<u>Item Type</u>	<u>Item Road Numbers Under Rock Island Lease</u>
50 ft. Box Cars	RI 35050 to RI 35174, all inclusive except- ing therefrom RI 35057, 35073, 35145 and 35155
50 ft. Box Cars	RI 35175 to RI 35249, all inclusive, except- ing therefrom RI 35181, 35328, 35234 and 35242
77 Ton Air Dumps	RI 97422 to RI 97433, all inclusive
70 Ton Airslide Hoppers	RI 8679 to RI 8713, all inclusive, excepting therefrom RI 8708

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INTERSTATE COMMERCE COMMISSION

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LEASE AGREEMENT  
FOR RAILROAD EQUIPMENT

dated as of September 1, 1980

between

C.I.T. CORPORATION,

Lessor

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

Lessee.

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LEASE AGREEMENT FOR RAILROAD EQUIPMENT (hereinafter called "Lease"), dated as of September 1, 1980, between C.I.T. Corporation, a New York corporation (hereinafter called the "Lessor"), and Chicago and North Western Transportation Company, a Delaware corporation (hereinafter called the "Lessee").

The Lessor is the owner of the railroad equipment listed on Annex A hereto (the "Equipment"), and, acting through its agent and affiliate, C.I.T. Leasing Corporation, a Delaware corporation, has previously leased the Equipment, among other railroad equipment, to Chicago, Rock Island and Pacific Railroad Company, a Delaware corporation (the "Debtor"), as lessee pursuant to a Lease Agreement for Railroad Equipment dated as of June 1, 1969 (the "Rock Island Lease"). The Rock Island Lease was filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, as then in effect, on June 19, 1969 and assigned Recordation No. 5296.

The Lessor and William M. Gibbons, Trustee of the Property of the Debtor (the "Trustee"), have entered into a Termination Agreement dated as of September 1, 1980 (the "Rock Island Termination Agreement") with respect to the Rock Island Lease, as to the Equipment. The Rock Island Termination Agreement was filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on \_\_\_\_\_, 1980 and assigned Recordation No. \_\_\_\_\_.

Section 1. Definitions. Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Lease:

- (a) "Casualty Occurrence" shall have the meaning specified in Section 7 hereof.
- (b) "Equipment" shall mean the railroad cars described in Annex A hereto and any and all appliances, parts or other equipment of whatever nature incorporated in, installed in or attached to any such railroad car upon its delivery to the Lessee hereunder.
- (c) "Event of Default" shall have the meaning specified in Section 10 hereof.
- (d) "Interchange Point" shall mean a point of interchange with the lines of railroad owned and operated by the Lessee (not including lines of railroad owned by the Trustee or other parties but operated by the Lessee).

- (e) "Item" shall mean each of the railroad cars constituting the Equipment.
- (f) "Loadable Interchange Condition" shall mean as to any Item that the Item is in condition both
  - (i) eligible for use in interchange service in accordance with the Interchange Rules of the Association of American Railroads (the "Interchange Rules") and the safety standards of the Federal Railway Administration and (ii) fit for loading in normal service for the Item's car type and mechanical designation.
- (g) "Purchase Price" of a Unit shall mean the purchase price set forth for such Unit on Annex A hereto.
- (h) "Term" shall mean, in the case of each Unit, the term for which such Unit is leased pursuant to Section 3 hereof.
- (i) "Unit" shall mean each Item leased hereunder by the Lessee pursuant to Section 2 hereof.

Section 2. Agreement to Lease the Equipment. The Lessor hereby agrees to lease to the Lessee hereunder, and the Lessee hereby agrees to lease from the Lessor hereunder, each Item which shall on or before June 30, 1981 either (a) be in the possession of the Lessee in Loadable Interchange Condition, as determined by the Lessee's inspection, or (b) having been inspected by the Lessee at a point on lines of railroad owned by the Lessee, be undergoing repairs to restore such Unit to Loadable Interchange Condition (each such Item being referred to hereinafter as a "Unit"); provided that, if the cost to restore any Item to Loadable Interchange Condition estimated pursuant to this Section 2 exceeds the Casualty Value set forth in the Rock Island Lease for such Item as of the execution of the Rock Island Termination Agreement, then the Lessor shall have the option to exclude such Item from the terms of this Lease. Any Item which is not a Unit, in accordance with the foregoing definition and agreement to lease, shall be excluded from the terms of this Lease.

The Lessor and the Lessee recognize that the Rock Island Lease has been terminated pursuant to the Rock Island Termination Agreement, but that, as of the date of this Lease, the Lessor has not repossessed the Equipment from the Trustee, and that, as of such date, some of the Items are located on lines of railroad owned by the Lessee. The Lessor shall cause each Item not located on the date of this Lease on lines of railroad owned by the Lessee to be delivered, at

the Lessor's sole expense, to the Lessee at an Interchange Point.

The Lessee shall, at the Lessee's cost, promptly move each Item so delivered to it at an Interchange Point on or before June 30, 1981, and each Item located on the date of this Lease on lines of railroad owned by the Lessee, to a repair point of the Lessee for a thorough inspection.

If, based on the Lessee's inspection and in the sole judgment of the Lessee, the cost to restore an Item to Loadable Interchange Condition will be \$300.00 or less, the Lessee shall promptly make all repairs necessary, if any, to restore such Item to Loadable Interchange Condition.

If, based on the Lessee's inspection and in the sole judgment of the Lessee, the cost to restore an Item to Loadable Interchange Condition will exceed \$300.00, the Lessee shall set such Item aside and promptly notify the Lessor of the location of the Item, the repair work needed to restore the Item to Loadable Interchange Condition and the estimated cost of such repair work. The Lessor shall notify the Trustee of such information. The Lessor (unless the Lessor waives such inspection), the Trustee (unless the Trustee waives such inspection) and the Lessee shall jointly inspect such Item to establish the nature of and responsibility for needed repair work. After such inspection, the Lessee shall either make all repairs necessary to restore such Item to Loadable Interchange Condition or, at the Lessee's option (using its best judgment to obtain the repairs in the shortest reasonable time), direct the Item to a repair shop designated by the Lessor for such restoration, and return to the Lessee. The Lessee shall be responsible for the cost of transporting such Items to and from repair shops over lines of railroad owned by the Lessee. The Lessor shall be responsible for the cost of transporting such Items to and from repair shops over lines of railroad not owned by the Lessee. The Lessee may, at its option, reinspect any Item repaired by an outside repair shop, and shall make or cause to be made any additional repairs deemed necessary, in the judgment of the Lessee, to restore the Item to Loadable Interchange Condition.

The Lessee shall notify the Lessor in writing of the date on which each Item is first in the Lessee's possession in Loadable Interchange Condition (the "In-Service Date").

The Lessee shall use its best efforts to obtain for the Lessor the benefit of the least expensive possible transportation, under Rule 5 of the Car Service Rules of the Association of American Railroads or otherwise, for the Items for all distances that the Lessor is obligated to transport the Items

at its cost. The Lessee shall bill the Lessor for the cost of any such transportation which is the responsibility of the Lessor but which is billed by the transporting carrier to the Lessee, and the Lessor shall pay each such bill within 30 days after its date.

Upon the completion of the repair work to any Item performed by the Lessee, the Lessee shall bill the Lessor for such repair work at the rates prescribed by the Interchange Rules, and the Lessor shall pay each such bill within 30 days after its date.

Section 3. Rentals and Term. The Lessee agrees to pay to the Lessor as rental for each Unit one interim payment (the "Interim Rent"), followed by consecutive semi-annual payments (the "Semi-Annual Rent") payable in arrears, the last such payment to be on February 1, 1996. Semi-Annual Rent shall be payable on February 1 and August 1 (each such date being a "Semi-Annual Rent Date"). Interim Rent shall be payable, and Semi-Annual Rent shall commence, as follows:

- (a) for each Unit first in the possession of the Lessee and, as determined by an inspection by the Lessee, in Loadable Interchange Condition within 30 days following the date of execution of the Termination Agreement (a "Group A Unit"), Interim Rent shall be in an amount equal to the product of (i) the Semi-Annual Rent payable for such Unit, as set forth on Annex A hereto, divided by 180, and (ii) the number of days from but excluding the date of execution of the Termination Agreement to and including January 31, 1981, and shall be payable within thirty days after February 1, 1981. Semi-Annual Rent for such Unit shall commence to accrue on February 1, 1981; and
- (b) for each Unit which is not a Group A Unit (i.e., an Item which is not a Group A Unit but which on or before June 30, 1981 either (i) is in the possession of the Lessee in Loadable Interchange Condition, as determined by the Lessee's inspection, or (ii) having been inspected by the Lessee at a point on lines of railroad owned by the Lessee, is undergoing repairs to restore such Unit to Loadable Interchange Condition) (a "Group B Unit"), Interim Rent shall be in an amount equal to the product of (i) the Semi-Annual Rent payable for such Unit, as set forth on Annex A hereto, divided by 180, and (ii) the number of days from but excluding the In-Service Date as to such Unit to but excluding the Semi-Annual Rent Date next following such determination, and



shall be payable within thirty days after such Semi-Annual Rent Date. Semi-Annual Rent for such Unit shall commence to accrue on such Semi-Annual Rent Date.

If any Semi-Annual Rent Date is not a business day, the payments otherwise then payable shall be payable on the next succeeding business day.

All payments required by this Lease to be made to the Lessor, including but not limited to the payments required under Section 7 of this Lease, shall be made to the Lessor at its office at 650 Madison Avenue, New York, N. Y. 10022 or at such other place as the Lessor shall specify in writing.

This Lease is a net lease and, except as otherwise provided in the second paragraph of Section 10 hereof, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any person or any entity having a beneficial interest in any Unit; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

The term of this Lease as to each Unit shall begin, as to each Group A Unit, on the date of execution of the Rock Island Termination Agreement, and as to each Group B Unit, on the In-Service Date as to such Unit and, subject to the provisions of Sections 7 and 10 hereof, shall terminate on the date on which the final payment of Semi-Annual Rent in respect thereof is due hereunder.

Section 4. Representations and Warranties of Lessor and Lessee. The Lessee represents and warrants that:

A. the Lessee is a corporation, legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

C. this Lease, when filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and when duly recorded in Canada will protect the Lessor's interest in and to the Units leased hereunder and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interest of the Lessor in and to the Units hereunder;

D. no approval is required from any public regulatory body with respect to the Lessee's entering into or performing this Lease;

E. the entering into and performance of this Lease by the Lessee will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect any property or interests therein of the Lessee, now attaches or hereinafter will attach to the Units leased hereunder or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder (subject to all terms and provisions of this Lease) in and to the Units leased hereunder.

The Lessor represents and warrants that:

A. the Lessor is the owner of the Equipment, free and clear of all liens, security interests and other encumbrances;

B. the execution of this Lease has been duly authorized by all necessary corporate action and it will, when executed and delivered, constitute the legal and binding agreement of the Lessor, enforceable in accordance with its terms; and

C. The Rock Island Termination Agreement is the valid and binding obligation of the Trustee, enforceable in accordance with its terms, an order of the United States court having jurisdiction over the property of the Debtor pursuant to the Bankruptcy Act approving the Rock Island Termination Agreement will be validly entered within forty-five days after the execution of this Lease, and when so entered will be enforceable in accordance with its terms, and the Rock Island Termination Agreement and such order together will be effective to terminate the Rock Island Lease and to release all interest of the Trustee in the Equipment, free and clear of all liens, claims and other encumbrances of or in favor of persons claiming by, through or under, or arising out of acts of, the Debtor or the Trustee.

Section 5. Identification Marks. The Lessee will cause each Unit to be renumbered with a road number reflecting the interest of the Lessee in the Unit, and will file a statement of such new number with the Lessor and will file, record and deposit such statement in all public offices where this Lease shall have been filed, recorded and deposited. The Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words:

"C.I.T. CORPORATION, OWNER"

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit, and the rights of the Lessor under this Lease. The Lessee will not place any Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit except in accordance with a statement of new road numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership other than that of the Lessor; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Units as permitted under this Lease.

Section 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and with respect to the amount of any local, state, federal or foreign taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by any Unit, for any period beginning on or after the commencement of rent hereunder as to such Unit, or this Lease or any sale, rental, ownership, possession, use, payment, shipment, delivery, nondelivery, rejection, transfer of title, return or other disposition of the Units (other than a disposition by the Lessor following return of any Unit in accordance with Section 13 hereof) under the terms hereof (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] on or measured by the net income of the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or local taxes on or measured by the net income of the Lessor based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay), all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it otherwise provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit

free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and the Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this Section 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. The Lessee agrees to give the Lessor notice of such contest brought in the Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this Section 6.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor in such Units, as shall be satisfactory to the Lessor or, where not so permitted, will notify the Lessor of such requirement and will prepare and deliver such reports to the Lessor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

If claim is made against the Lessor for any impositions indemnified against under this Section 6, the Lessor shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Lessor shall, upon receipt of indemnity

satisfactory to it for all costs, expenses, losses, legal and accountants fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such impositions in the name of the Lessor, provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Lessor in any such proceeding or action) without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. If the Lessor shall obtain a refund of all or any part of such impositions previously reimbursed by the Lessee in connection with any such contest, including any amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, the Lessor shall pay to the Lessee the amount of such refund, including any interest, net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this Section 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this Section 6 shall be an amount sufficient to restore the Lessor to the same net return that the Lessor would have realized except for such payment.

Section 7. Payment for Casualty Occurrences. In the event that any Unit shall become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States government for a stated period which shall exceed the then remaining term of this Lease, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term

hereof (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On the Semi-Annual Rent Date with respect to such Unit next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit as provided in Section 13 hereof, unless the Lessee has disposed of such Unit pursuant to the terms of the third paragraph of this Section 7.

The Casualty Value of each Unit as of any Semi-Annual Rent Date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such Semi-Annual Rent Date:

<u>Payment Date</u>	<u>Percentage</u>	<u>Payment Date</u>	<u>Percentage</u>
8/1/81	93.13%	2/1/89	68.43%
2/1/82	92.07%	8/1/89	65.89%
8/1/82	90.94%	2/1/90	63.20%
2/1/83	89.75%	8/1/90	60.34%
8/1/83	88.49%	2/1/91	57.31%
2/1/84	87.15%	8/1/91	54.10%
8/1/84	85.73%	2/1/92	50.70%
2/1/85	84.22%	8/1/92	47.09%
8/1/85	82.63%	2/1/93	43.27%
2/1/86	80.94%	8/1/93	39.22%
8/1/86	79.14%	2/1/94	34.92%
2/1/87	77.24%	8/1/94	30.37%
8/1/87	75.23%	2/1/95	25.54%
2/1/88	73.10%	8/1/95	20.42%
8/1/88	70.83%	2/1/96 and thereafter	15.00%

The Lessor hereby irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value of such Unit to the Lessor, the Lessee shall be entitled to the net proceeds of such sale (after deducting all expenses in connection therewith) up to an amount equal to the Casualty Value of such Unit, and shall pay any excess to the Lessor.

At any time during the last three years of this Lease, if the Lessee shall in its reasonable judgment determine that any Unit has become obsolete or shall be surplus to the Lessee's requirements, or it is not feasible to comply with the provisions of the second and third paragraphs of Section 9 hereof with respect to such Unit, the Lessee shall have the right at its option, on at least 30 days' prior written notice to the Lessor, to terminate this Lease as to such Unit (subject to the provisions for the survival of indemnification obligations contained herein) as of the next succeeding Semi-Annual Rent Date, upon payment to the Lessor of the Economic Casualty Value, as hereinafter defined, of such Unit as of the date of such payment, and such Unit shall be treated as having suffered a Casualty Occurrence. The Economic Casualty Value of each Unit as of any Semi-Annual Payment Date on or after August 1, 1993 shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such Semi-Annual Rent Date:

<u>Payment Date</u>	<u>Percentage</u>
8/1/93	28.01%
2/1/94	23.04%
8/1/94	17.77%
2/1/95	12.19%
8/1/95	6.27%
2/1/96 and thereafter	-0-

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after the In-Service Date as to such Unit.

Section 8. Annual Reports. On or before April 30 in each year commencing with the year 1982, the Lessee will cause to be furnished to the Lessor an accurate statement, as of the immediately preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by Section 5 hereof shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records



with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. Except to the extent that the Lessor has agreed in Section 2 hereof to bear the cost of restoring each Item to Loadable Interchange Condition at the commencement of this Lease, THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessee's delivery to the Lessor of a notice that a Unit is in Loadable Interchange Condition shall be conclusive evidence as between the Lessee and the Lessor that such Unit is in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all applicable laws of the jurisdictions in which the Units may be operated, with the Interchange Rules and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units. In the event that, prior to the expiration of this Lease, such laws or rules require the alteration of the Units or in case any equipment or appliance on any Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Units in full compliance with such laws, regulations, requirements and rules so long as they are subject to this Lease; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not in the reasonable opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this

Lease in good order and repair for a railcar of its age, car type and mechanical designation, at a level at least comparable to that at which the lessee maintains all other owned and leased railcars in its fleet.

The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (collectively "Additions") to any Unit as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Unit, and shall not diminish the value, utility or condition of the Unit below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Lessor in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the provisions of the third paragraph or the first sentence of the second paragraph of this Section 9 or (iii) such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit would have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee and may be removed by the Lessee at any time during the term of this Lease and prior to return of the Units to the Lessor.

The term "Part" for the purposes of this Section 9 shall include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

Notwithstanding any other provision of this Lease, the Lessor and the Lessee agree that the Lessee will not be responsible for any cost or item in connection with the Rock Island Lease or any Item arising prior to, or as a result of events occurring prior to, the later of the effective date or the date of execution of the Rock Island Termination Agreement. The Lessor agrees to indemnify and save harmless the Lessee from and against any charge or claim made against the Lessee and against any expense or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessee may incur in any manner out of or as a result of the assertion of any finder's fee, broker's fee or similar fee or commission by any person by reason of the Lessee's having entered into this Lease. Except as otherwise provided in the preceding two sentences of this paragraph, and except as to charges and claims by the Trustee, the Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or the performance of this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities by each of the Lessor and the Lessee arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of its ownership of the Units or the leasing thereof to the Lessee.

Section 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein called an "Event of Default") shall occur:

A. default shall be made in the payment of any part of the rental provided for in Section 3 hereof and such default shall continue for 10 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

B. any representation or warranty made by the Lessee herein or in any document or certificate furnished the Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect;

C. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units leased hereunder, or any thereof;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

F. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings, or otherwise

given a status comparable to obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit as to which the Lessee has not on the date of such termination given the Lessor notice of the occurrence of a Casualty Occurrence, which represents the excess of (x) the present value, at the date of such termination, of the entire unpaid sum of all rental payments for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rental payments which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained in the exercise of Lessor's remedies hereunder available upon the occurrence of an Event of Default or by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental. The present value at any date of any rental payment shall

mean an amount which, with interest thereon at the rate of 10% per annum compounded semi-annually from such date to the date on which such rental payment would become due and payable, will equal the amount of such rental payment.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, except offsets arising from the failure of the Lessor to pay the Lessee in a timely manner (i) for the cost of transporting Items or of repairing Units as provided in Section 3, or (ii) indemnification payments due pursuant to the provisions of the seventh paragraph of Section 9 hereof, and agrees to make rental payments regardless of any offset or claim, except offsets described above in this sentence, which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units leased hereunder at the time of such termination to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith cause such Units to be placed upon such storage tracks or other suitable property of the Lessee as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select,

B. permit the Lessor to store such Units on such tracks or other suitable property for a period not exceeding six months, and

C. transport the same, at any time within such six months' period, to any place on any lines of railroad owned and operated by the Lessee or to any

connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee, and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

Section 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent to sublease the Units to, or to permit their use by, a user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however,

that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term or terms that aggregate more than six months in any one year; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit outside the United States of America, except occasional use permitted in Canada or Mexico as long as such use does not involve regular operation and maintenance outside the United States of America. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default hereunder.

The Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforementioned and other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor or the Lessee therein; except that this covenant will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed all of the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased the lines of railroad of the Lessee as an entirety or substantially as an entirety.



Section 13. Purchase Option; Return of the Units upon Expiration of Term. Not earlier than August 1, 1995, the Lessee may cause the Appraiser (as hereinafter defined) to make an appraisal of the fair market value of all of the Units then leased hereunder and the report of the Appraiser setting forth its determination of such fair market value shall be delivered to the Lessor and the Lessee not later than two months after the designation of the Appraiser. Such fair market value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than a lessee currently in possession) and an informed and willing seller under no compulsion to sell, except that, in such determination, (i) costs of removal from the location of current use shall not be a deduction from such value, and (ii) there shall be excluded any sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to Section 9 hereof. The fair market value as so determined by the Appraiser in respect of any Unit is hereinafter called the Market Value of such Unit.

If the Lessee shall cause such appraisal to be made, the Lessee, by written notice delivered to the Lessor not later than 15 days after delivery to the Lessee of the Appraiser's report, unless an Event of Default shall have occurred and be continuing hereunder, may elect to purchase all, but not fewer than all, of the Units then leased hereunder, for an aggregate purchase price in cash equal to the Market Value of all of such Units. Upon payment to the Lessor of such purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon within 20 business days after the Lessee has given notice to the Lessor of the Lessee's desire to cause the appointment of an Appraiser, or, failing such agreement within such 20 business day period, a panel of three independent appraisers, one of whom shall be selected by the Lessor within 25 business days after such notice from the Lessee, the second by the Lessee

within such 25 business day period, and the third designated within 30 business days after such notice from the Lessee, by the first two so selected. In the event that the Appraiser is a panel of three, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Appraiser's determination of Market Value. In the event that the Lessor and the Lessee fail to agree on a single appraiser within the prescribed 20 business day period, and either the Lessor or the Lessee fails to select an appraiser for a panel, within the prescribed 25 business day period, then the appraiser selected by the other party shall be the Appraiser alone, instead of a panel of appraisers. If the two appraisers selected by the Lessor and the Lessee respectively fail to designate a third appraiser within such 30 business day period, either party may apply to the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. The costs of appraisal shall be borne equally by the Lessee and the Lessor.

The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date of this Lease, except as modified hereby. The provisions for this appraisal procedure shall be the exclusive means of determining the Market Value of the Units, and shall be in lieu of any judicial or other procedure for the determination thereof, and the Lessor and the Lessee each hereby consents and agrees not to assert any judicial or other procedures.

As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit which the Lessee does not purchase pursuant to this Section 13, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may reasonably designate, in such city on the lines of the Lessee as the Lessor may reasonably designate, or in the absence of Lessor's designation, in such city on the lines of the Lessee as the Lessee may designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding 60 days and transport the same, at any time within such 60 day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and

risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally accepted by the Lessee pursuant to Section 2 hereof, ordinary wear and tear excepted, and (ii) except for additions, modifications and improvements which the Lessee is entitled to remove under the provisions of Section 9 of this Lease, meet all operating standards in effect as of the date of termination of this Lease under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transportation of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. In the event that 80% of the Units to be delivered in accordance with the foregoing provisions are not so delivered within 60 days after such termination, the Lessee shall pay the Lessor, for each Unit not so delivered, from such 60th day until so delivered, the greater of (i) \$5.66 per day for each such Unit, or (ii) all amounts earned in respect of each such Unit after such date, which amounts shall belong to Lessor (if this clause (ii) applies) and, if received by Lessee, shall be promptly turned over to Lessor.

Section 14. Opinions of Counsel. Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, dated as of the date delivered, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation, legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

C. this Lease, when filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and when duly recorded in Canada will protect the Lessor's interest in and to the Units leased hereunder and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interest of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the Lessee's entering into or performing this Lease;

E. the entering into and performance of this Lease by the Lessee will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound of which such counsel has actual knowledge; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect any property or interests therein of the Lessee, of which such counsel has actual knowledge, now attaches or hereinafter will attach to the Units leased hereunder or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such lien may attach to the rights of the Lessee hereunder (subject to all terms and provisions of this Lease) in and to the Units leased hereunder.

Concurrently with the execution and delivery of this Lease, the Lessor will deliver to the Lessee two counterparts of the written opinion of counsel for the Lessor, dated as of the date delivered, addressed to the Lessee, in scope and substance satisfactory to the Lessee and its counsel, to the effect that:

A. the Lessor is the owner of the Equipment, free and clear of all liens, security interests and other encumbrances;

B. the execution of this Lease has been duly authorized by all necessary corporate action and it will, when executed and delivered, constitute the legal and binding agreement of the Lessor, enforceable in accordance with its terms; and

C. the Rock Island Termination Agreement is the valid and binding obligation of the Trustee, enforceable in accordance with its terms, an order of the United States court having jurisdiction over the property of the Debtor pursuant to the Bankruptcy Act approving the Rock Island Termination Agreement, when entered, will be enforceable in accordance with its terms, and the Rock Island Termination Agreement and such order together will be effective to terminate the Rock Island Lease and to release all interest of the Trustee in the Equipment, free and clear of all liens, claims and other encumbrances of or in favor of persons claiming by, through or under, or arising out of acts of, the Debtor or the Trustee, *etc.*

Section 15. Recording; Expenses. Promptly upon the execution of this Lease by both parties, the Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Lessor's title to the Units, or for the purpose of carrying out the intention of this Lease.

Section 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder shall result in the obligation on the part of the Lessee promptly to pay also interest at the rate of 9% per annum on any part of such rental not paid on the due date thereof for any period during which the same shall be overdue.

Section 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, firstclass postage prepaid, addressed as follows:

if to the Lessor, at 650 Madison Avenue, New York, N.Y. 10022, Attention: Nikita Zdanow, Vice President;

if to the Lessee, at 400 West Madison Street, Chicago, IL 60606, Attention: Assistant Vice President - Finance;

or addressed to either party at such other address as such party shall hereafter have furnished to the other party in writing.

Section 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

Section 19. Execution in Counterparts. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

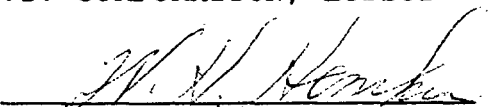
Section 20. Law Governing. This Lease shall be construed in accordance with the laws of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

Section 21. Lessor's Right to Perform for Lessee. If the Lessee fails to duly and promptly perform any of its obligations under this Lease or fails to comply with any of the covenants or agreements contained herein, the Lessor may itself perform such obligations or comply with such covenants or agreements, for the account of the Lessee without thereby waiving any default, and any amount paid or expense (including reasonable attorneys' fees) incurred by the Lessor in connection with such performance or compliance shall, together with interest thereon at the rate of 9% per annum, be payable by the Lessee to the Lessor on demand.

IN WITNESS WHEREOF, the Lessee and the Lessor, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate

seals to be hereunto affixed and duly attested, as of the date first above written.

C.I.T. CORPORATION, Lessor

By   
Vice President

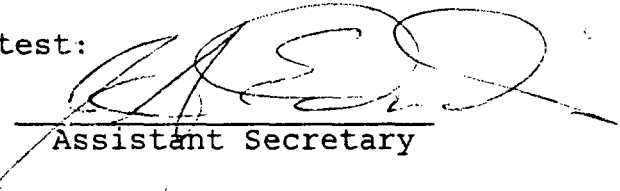
Attest:

By   
Assistant Secretary

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY, Lessee

By   
Senior Vice President

Attest:

By   
Assistant Secretary

STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK        )

On this 4th day of December, 1980, I personally compared this copy of the Lease Agreement For Railroad Equipment dated as of September 1, 1980 between C.I.T. Corporation and Chicago and North Western Transportation Company with the original of said Lease and now hereby acknowledge that this copy is a true and correct copy in all respects of the original Lease.

*Linda M. Meyers*  
Notary Public

[SEAL]

NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES AUG. 21 1987  
ISSUED THRU ILLINOIS NOTARY ASSOC.

My Commission Expires \_\_\_\_\_



ANNEX A

<u>Item Type</u>	<u>Item Road Numbers Under Rock Island Lease*</u>	<u>Number of Items*</u>	<u>Semi-Annual Rent Per Item</u>	<u>Purchase Price</u>
50 ft. Box Cars	RI 35050 to RI 35174 all inclusive except- ing therefrom RI 35057, 35073, 35145 and 35155	121	\$1,260	\$18,951.05
50 ft. Box Cars	RI 35175 to RI 35249, all inclusive, except- ing therefrom RI 35181, 35328, 35234 and 35242.	71	\$1,260	\$18,263.05
77 Ton Air Dumps	97422 to RI 97433, all inclusive	12	\$1,200	\$18,783.33
70 ton Airslide Hoppers	RI 8679 to RI 8713, all inclusive, except- ing therefrom RI 8708	34	\$960	\$14,905.49

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\* Excepting therefrom all other Items which have suffered a Casualty Occurrence under the terms of the Rock Island Lease and which are not excepted by the terms of this Annex A.

STATE OF ILLINOIS     )  
                              ) ss.  
COUNTY OF COOK        )

On this 23<sup>rd</sup> day of September, 1980, before me personally appeared W. H. HENKER, to me personally known, who, being by me duly sworn, said that he is a Vice President of C.I.T. CORPORATION, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Thomas M. Fitzpatrick  
Notary Public

My Commission Expires 2/1/82

(SEAL)

STATE OF ILLINOIS     )  
                              ) ss.  
COUNTY OF COOK        )

On this 23<sup>rd</sup> day of September, 1980, before me personally appeared J. M. Butler, to me personally known, who, being by me duly sworn, said that he is the Senior Vice President - Finance of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

F. J. Brey  
Notary Public

My Commission Expires May 21, 1982

(SEAL)